

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION AT LAFAYETTE

IN THE MATTER OF: )  
 )  
CONSOLIDATED INDUSTRIES CORP. ) CASE NO. 98-40533  
 )  
Debtor )

**DECISION AND ORDER**

At Fort Wayne, Indiana, on July 22, 2005.

Enodis Corporation has filed motions to compel the deposition testimony of Guy Webster and Jeffrey Richardson, pursuant to a subpoenas issued in the Central District of California. These motions were filed pursuant to Rule 37 of the Federal Rules of Civil Procedure and ask the court to require the deponents to answers questions posed of them in depositions held in June, as well as any follow-up questions based on the answers they may give.

Ideally, discovery is supposed to be completed without the need to involve the court. But, when problems do arise, Rule 37 provides a mechanism to resolve discovery disputes. The request, however, must be filed in the proper court. Which court that may be turns on whether the order compelling discovery is directed to a party or non-party. “An application for an order to a person who is not a party shall be made to the court in the district where the discovery is being, or is to be, taken.” Fed. R. Civ. P. Rule 37(a)(1)(emphasis added). The purpose behind this requirement is the lack of a basis for exercising personal jurisdiction over a non-party, Lincoln Laboratories, Inc., 27 F.R.D. 476, 479 (D. Del. 1961), and also to “spare the non-party witness the inconvenience and hardship of traveling to a distant forum in order to defend himself.” In re Corrugated Container Antitrust Litigation, 662 F.2d 875, 881 (D.C. Cir. 1981).

Based upon a plain reading of Rule 37(a), Enodis Corporation’s motions should have been

filed in California. See, First Nat. Bank, etc. v. Western Cas. and Sur. Co., 598 F.2d 1203, 1205 (10th Cir. 1979); Lincoln Laboratories, Inc. v. Savage Laboratories, Inc., 27 F.R.D. at 478-79. Mr. Webster and Mr. Richardson are not parties to the action. Therefore, any request to compel them to respond to discovery must be made to the court in the district where their depositions were being taken – the Central District of California. The court recognizes that the parties attempted to avoid this requirement by agreeing that the motion could be filed with this court, but nothing in the rule suggests this can be done. In other words, the rule does not read: “Unless the parties otherwise agree, an application for an order to a person who is not a party shall be made to the court in the district where the discovery is being, or is to be, taken.” Furthermore, even if a waiver of the rule’s requirements were permitted, the deponents, who are the ones protected by its provisions, have not joined in such a waiver.<sup>1</sup>

The motions to compel deposition testimony of Guy Webster and Jeffrey Richardson filed on July 19, 2005 are therefore DENIED.

SO ORDERED.

/s/ Robert E. Grant  
Judge, United States Bankruptcy Court

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<sup>1</sup>The court also notes the certificates of service accompanying Enodis’ motions and briefs indicate that Mr. Webster and Mr. Richardson were not served with copies of them.